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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/407,124	09/27/1999	WILLIAM D. KENNEDY	102045	2321
7590	06/04/2004		EXAMINER	
NOBLITT & GILMORE, LLC 4800 NORTH SCOTTSDALE ROAD SUITE 4800 SCOTTSDALE, AZ 85251			KEMPER, MELANIE A	
			ART UNIT	PAPER NUMBER
			3622	

DATE MAILED: 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/407,124	KENNEDY, WILLIAM D. <i>[Signature]</i>	
	<b>Examiner</b>	<b>Art Unit</b>	3622
M Kemper			

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 October 2003.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

Art Unit: 3622

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al., patent number 5,890,175 in view of Bezos et al., patent number 6,029,141.

Wong substantially teaches an electronic commerce system at least comprising a host in communication with a plurality of distributors (col. 3, lines 35-50); the host having a capability to sort discrete items from the distributors (col. 4, lines 5-15); and a store builder (col. 3, line 60 – col. 4, line 10) including border design and store name (fig. 2, merchant store information); product mix commensurate with a specialty store (fig. 3, specialty products, fig. 4.); store builder maintains a consumer accessible website separate from the store (fig. 11) and electronic link to the store (col. 6, line 60 – col. 7, line 5). Wong also substantially teaches the method at least comprising having a store owner electronically accessing a host, select a store type, setting up an account, customizing the appearance, customizing a product mix (see at least figs. 2-5, 7-8, col. 3, lines 20-40, col. 4, lines 1-67) including border design and store name (fig. 2, merchant store information); product mix commensurate with a specialty store (fig. 3, specialty products, fig. 4.).

Bezos et al. teaches devising a commission schedule (see at least col. 2, lines 1-20, col. 7, lines 35-40) and stores providing a consumer with access to items assigned a

unique tag (see at least col. 6, lines 20-25, col. 3, lines 10-25, col. 11, lines 55-65, col. 7, lines 10-15). It would have been obvious to one having ordinary skill in the art at the time of the invention to have used the commission and access via a distributor, to items assigned a unique tag as in Bezos in the system and method of Wong since the commission and access of Bezos would have promoted marketing of goods and exposure as taught by Bezos (col. 1, lines 25-50, col. 3, lines 25-40). It also would have been obvious to have customized the store by a combination of all the options of claim 3 since these are well known in the store building art for further distinction of store sites. It also would have been obvious to have the product mix commensurate with a key word store since this is well known in the art for customer searching and which would have been adopted for the intended use of searching the mall of Wong. It also would have been obvious to have permitted the ordering of personalized items since this is well known in the art and would have been adopted for the intended use of at least applications to clothing items (such as Land's End catalog which offers sewing of initials to items). It also would have been obvious to have a store owner own multiple stores each with a different URL since this would have been adopted for the intended use of running multiple specialty stores. It also would have been obvious to have the host not discernable by the customer since the customer interaction of Wong and Bezos is with the store (buying from the store, not the mall in general). It also would have been obvious to have deselected undesired items since this would have been adopted at least for the intended use of generating specialty stores.

3. Applicant's arguments filed on 10/21/03 have been fully considered but they are not persuasive. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). As stated above, suggestion is provided in at least Bezos.

The applicant argues that the combination does not teach a class designation for identifying product items available from a plurality of distributors such that 'members of a same class are assigned a unique tag'. Upon further review of Wong, the class designation exists at least with the group ID and subgroup information such as aisle and shelf designations (col. 4, lines 5-55). Bezos further supports the class designation by providing a hyperlink for the grouping of products.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kvitka "Review: Maestro Conducts Sales...and Inventory" teaches customization of Web stores InfoWorld v. 21, n. 7, 2/15/99 (whole document). No Author, "iCat Commerce Online Opens...Free Store on the Internet" PR Newswire, 4/21/98 teaches a store builder and store free on the mall (whole document).

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M Kemper whose telephone number is 703-305-9589. The examiner can normally be reached on M-F (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric W. Stamber can be reached on 703-305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



M Kemper  
Primary Examiner  
Art Unit 3622

MK